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as those of its competitor; the catalogues being easily distinguished from each other.

Appeal from Chancery Court of Richmond.

Suit by the Benjamin T. Crump Company, Incorporated, against J. L. Lindsay, Incorporated. From decree dismissing the bill, plaintiff appeals. Affirmed.

R. W. Carrington, of Richmond, for appellant.

S. S. P. Patteson and *Jos. P. Sadler*, both of Richmond, for appellee.

BRITTON & KENNEDY, Inc., et al. v. TERRY.

June 16, 1921.

[107 S. E. 687.]

1. Brokers (§ 86 (1)*)—Evidence Held to Show that Brokers Who Negotiated Sale to Complainant in Suit to Quiet Title Were Not Entitled to Commissions from Him.—Evidence held to show that defendant brokers, who effected a sale under agreement with one having a contract for the purchase of land, were not entitled to commissions from complainant in suit to quiet title, who bought the land from the original owner and acquired rights of the holder of the contract; it appearing that they did not effect any resale at a profit, and it being the agreement between the parties, as a result of complicated transactions due to several land contracts and purchases, that the defendant brokers should not be entitled to commissions unless they make such a resale.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 266.]

2. Brokers (§ 86 (1)*)—Evidence Held to Establish Cancellation and Rescission of Contract of Employment.—Evidence held to establish cancellation and rescission by mutual consent of a contract whereby parties were to act as sales agents and receive commissions from the owner of lands.

3. Appeal and Error (§ 93 (1)*)—Presumption in Favor of Action of Trial Court.—On every appeal, the action of the trial court below carries with it the presumption of correctness, until the contrary is made to appear.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 609, 610.]

4. Appeal and Error (§ 843 (2)*)—Questions Unnecessary for Decision Need Not Be Determined.—Where on the facts it appeared that defendants were entitled to no commissions, and it also appeared that a contract was canceled by mutual consent, the questions whether defendants

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

were estopped to claim commissions, and whether there was an accord and satisfaction rendering the cancellation valid, need not be determined.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 129.]

Appeal from Circuit Court, Lunenburg County.

Suit to quiet title by E. M. Terry against Britton & Kennedy, Incorporated, and others. From a decree for complainant, defendants appeal. Affirmed.

Geo. E. Allen, of Victoria, for appellants.

N. S. Turnbull, Jr., of Victoria, and *Jas. H. Guthrie*, of South Boston, for appellee.

BLACK *v.* DAUGHTRY.

June 16, 1921.

[107. S. E. 694.]

1. Trial (§ 154*)—**Demurrer to Evidence, on Ground that Vendor Had Never Been in a Position to Give Title, Held Insufficient.**—In action for breach of contract to purchase land by vendor, who, on purchase of property, because of domestic trouble and to avoid having wife sign deed, has caused the land to be conveyed to a third person, who had agreed to hold title as a matter of accommodation to vendor, demurrer to the evidence, on the ground that vendor "has never been in a position to give such title to the said property unto the said defendant as he obligated himself to give," held insufficient, under Code, § 6117, requiring grounds of demurrer to be specifically stated in writing, in that it was not explicit as to what title it was claimed the vendor had obligated himself to give, or as to what position it was claimed vendor should have been in, in order to give such title, since it could have meant that vendor could not give legal title, because he did not himself acquire it, or that the contract had been to give good title by deed from third person, and that deed to third person had conveyed no title, or that vendor could not give title by conveyance to third person, because such conveyance would have left outstanding the contingent dower right of vendor's wife, even if the deed to the third person conveyed legal title.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 494.]

2. Trial (§ 154*)—**Demurrer, on Ground that Vendor Has Never Offered Purchaser Any Deed from True Owner, Held Not Sufficiently Specific.**—In action for breach of contract to purchase land by vendor, who, on purchase of property, because of domestic trouble and to avoid having wife sign deed, had caused the land to be con-

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